

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

EDDIE BELL,

Plaintiff,

v.

I. BACA, *et al.*,

Defendants.

3:17-cv-0343-MMD-CBC

**REPORT AND RECOMMENDATION
OF U.S. MAGISTRATE JUDGE**

This Report and Recommendation is made to the Honorable Miranda M. Du, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4. Before the court is defendants' motion to enforce settlement agreement (ECF No. 11). No opposition was filed. As more fully set forth below, the court recommends defendants' motion be granted.

I. Procedural History

Plaintiff Eddie Bell ("plaintiff") is an inmate in the custody of the Nevada Department of Corrections ("NDOC"). At all times relevant to this action, plaintiff was housed at the Northern Nevada Correctional Center ("NNCC"). Plaintiff generally alleges that a physician ordered him to be on 2600-calorie medical diet and defendants refused to carry out the doctor's orders which caused plaintiff weight loss and a slowed healing of his diabetic symptoms (ECF No. 4). The court issued a screening order allowing plaintiff to proceed on his first claim for relief, which alleged deliberate indifference to serious medical needs (ECF No. 3).

On September 25, 2018, an early mediation conference was held in this case before a mediator, and the parties reached a settlement (ECF No. 9). The terms of the settlement were placed on the official court record. The court has reviewed the

1 recording of the hearing to confirm the settlement. The mediator stated on the record
2 that it would recite the terms of the settlement and that if any party or counsel required
3 clarification or had any questions, that person was invited to so advise the court. The
4 mediator further stated that an essential term of the settlement was that the parties had a
5 binding agreement that day, and the court would canvass the parties and counsel to
6 confirm that they understood and agreed to the settlement terms. The court noted that
7 although the parties had a binding settlement agreement that day, defendants' counsel
8 was to memorialize those terms in a written settlement agreement for the parties'
9 signatures. However, the parties understood and agreed that that fact would be no
10 basis to renege on the settlement.

11 The terms of the settlement stated on the record and agreed among the parties
12 and counsel were as follows:

13 1. The NDOC agreed to have plaintiff seen by a doctor for a diabetes
14 evaluation, within thirty (30) days of all parties signing the settlement agreement. At the
15 time of the said doctor appointment the doctor would review and/or prescribe a medical
16 diet if plaintiff's health so required. Plaintiff understood that the agreement regarding a
17 medical appointment and/or medical diet is a one-time medical evaluation and is not a
18 guarantee that he would receive a medical diet. Plaintiff understood that if a medical diet
19 is prescribed that he shall have to renew any prescription as required by NDOC AR's,
20 OP's and/or Medical Directives.

21 2. That if plaintiff was prescribed a medical diet, a Culinary Supervisor
22 shall allow plaintiff to see/review a one-month sample diet that conforms to whatever diet
23 he was prescribed. Said sample monthly diet shall include calorie count specifications.
24 Plaintiff understood that he would not be provided a copy of said monthly sample diet,
25 and that this is a one-time only review.

1 3. Plaintiff agreed to stipulate to dismiss with prejudice this case in its
2 entirety within thirty (30) days and this court would retain jurisdiction over the settlement
3 agreement until the stipulation to dismiss is entered.

4 When the mediator, counsel and the parties put the settlement terms on the
5 record, the mediator inquired of all present if there were any clarifications or questions
6 concerning the settlement. Aside from one question about keeping a copy of the sample
7 diet, plaintiff responded that he had no other questions or clarifications.

8 Subsequent to the settlement conference, defense counsel drafted a settlement
9 agreement that set forth the terms of the agreement and sent the same to the plaintiff
10 together with a stipulation to dismiss with prejudice (ECF No. 11). Plaintiff thereafter
11 repudiated the agreement and refused to sign the documents. (*Id.*) Defense counsel
12 held a telephone conference with plaintiff on October 24, 2018, wherein plaintiff stated
13 that he would not sign the agreement and dismiss his case with prejudice as agreed.
14 (*Id.*)

15 II. Discussion and Analysis

16 Courts have inherent authority to enforce settlement agreements between parties
17 in pending cases. See *Metronet Services Corp. v. U.S. West Communications*, 329 F.3d
18 986, 1013-1014 (9th Cir. 2003). (*cert. granted and judgment vacated on other grounds*
19 *by Quest Corp. v. Metronet Services Corp.*, 540 U.S. 1147 (2004); *Doi v. Halekulani*
20 *Corporation*, 276 F.3d 1131, 1136-1138 (9th Cir. 2002); *In re City Equities Anaheim,*
21 *Ltd.*, 22 F.3d 954, 957, (9th Cir. 1994). Moreover, a material term of this settlement
22 agreement was that the court retained jurisdiction over the settlement until the stipulation
23 for dismissal was lodged with the Clerk of Court.

24 To enforce a settlement agreement, two elements must be satisfied. *Marks-*
25 *Foreman v. Reporter Pub Co.*, 12 F.Supp 1089, 1092 (S.D.Cal. 1998). First, the
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1 settlement agreement must be complete. *Id.*, citing *Maynard v. City of San Jose*, 37
2 F.3d 1396, 1401 (9th Cir. 1994); *Doi*, 276 F.3d at 1137. Second, the settlement
3 agreement must be the result of an agreement of the parties or their authorized
4 representatives concerning the terms of the settlement. *Marks-Foreman*, 12 F.Supp at
5 1092, citing *Harrop v. Western Airlines, Inc.*, 550 F.2d 1143, 1144-1145 (9th Cir. 1977),
6 *Doi*, 276 F.3d at 1137-1138. Where parties raise objections after the parties agree to a
7 settlement, the court may rightfully deny such objections. *Harrop*, 550 F.2d at 1144.

8 The court must first consider whether the settlement agreement was complete.
9 *Marks-Foreman*, *supra*, at 1092. In this case, as in *Doi*, 276 F.3d 1131, the parties spent
10 several hours in private and joint sessions and agreed to a settlement of this case. The
11 parties and counsel then reconvened in open court to place the material terms of the
12 agreement into the record (ECF No. 9). The parties and counsel stated that they
13 understood and agreed that they had a binding settlement that day, that the terms could
14 not be changed, even though a written settlement agreement memorializing the terms
15 would follow. The settlement was complete on September 25, 2018, when the parties
16 agreed to each material term.

17 The court must then consider whether the settlement agreement was the result of
18 an agreement of the parties or their authorized representatives. *Marks-Foreman*, *supra*,
19 at 1092. There is no dispute that plaintiff and defendants' authorized representative
20 agreed to the stated terms of the settlement, which were later reduced to writing in the
21 settlement agreement, attached as Exhibit A to defendants' motion (ECF No. 11-1).

22 Finally, plaintiff failed to file an opposition to the motion to enforce settlement
23 agreement (ECF No. 11). Pursuant to Local Rule 7-2(d), the failure of an opposing party
24 to file points and authorities in response to any motion . . . constitutes a consent to the
25 granting of the motion.

III. Conclusion

The parties agreed to the materials terms of the settlement in the case and placed them on the court record. Plaintiff received what he bargained for at the early mediation conference as more fully set forth in the settlement agreement, attached as Exhibit A to defendants' motion (ECF No. 11-1). The bargain is memorialized in the settlement agreement (ECF No. 11-1, Exhibit A) and in the court's record, defendants stand ready and willing to perform in accordance with the agreement, and plaintiff's change of heart with respect to the settlement is no basis to set it aside.

The Court notes that plaintiff has refused to sign the written settlement agreement (ECF No. 11-1, Exhibit A), and the stipulation for dismissal of this case with prejudice. The court anticipates that plaintiff will continue to refuse to sign these settlement documents. Therefore, this court recommends that the District Court grant defendants' motion to enforce the settlement agreement (ECF No. 11), order that the settlement agreement attached as Exhibit A to defendants' motion be ratified as a binding agreement. The Court further recommends that the defendants be ordered to perform as agreed in the settlement agreement (Ex. A), and the District Court order this case dismissed with prejudice with the parties to bear their own costs and attorney's fees.

The parties are advised:

1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of Practice, the parties may file specific written objections to this report and recommendation within fourteen days of receipt. These objections should be entitled "Objections to Magistrate Judge's Report and Recommendation" and should be accompanied by points and authorities for consideration by the District Court.

IV. Recommendation

1. **GRANTING** defendants' motion to enforce the settlement agreement (ECF 1), order that the settlement agreement attached as Exhibit A to defendants' motion be deemed a binding agreement, and attach Exhibit A to its order for the Court's records.

3. **DISMISSING** this case with prejudice with the parties to bear their own and attorney's fees.

DATED: January 17, 2019.


UNITED STATES MAGISTRATE JUDGE